

AMENDED IN ASSEMBLY JANUARY 26, 2012

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 327

Introduced by Assembly Member Davis

February 10, 2011

An act to amend Sections 667 ~~and~~, 667.1, 1170.12, and 1170.125 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 327, as amended, Davis. Sentencing: ~~three strikes~~ *Three Strikes*.

Existing law, contained in 2 initiative statutes, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply. Existing law requires that if a defendant has 2 or more prior violent or serious felony convictions, the term for the current felony conviction shall be an indeterminate term of imprisonment in the state prison for life with a minimum term to be served, as specified.

This bill would provide that a defendant who has 2 or more prior violent or serious felony convictions shall receive the enhanced indeterminate life sentence only if the defendant's current conviction is for a serious or violent felony, as defined.

The bill would provide that it would become effective only when submitted to, and approved by, the voters, and would require the Secretary of State to submit the measure to the voters at the November 6, 2012 4, 2014, statewide general election.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, “serious felony” means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior *serious or violent* felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

1 (2) Probation for the current offense shall not be granted, nor
2 shall execution or imposition of the sentence be suspended for any
3 prior offense.

4 (3) The length of time between the prior *serious or violent* felony
5 conviction and the current felony conviction shall not affect the
6 imposition of sentence.

7 (4) There shall not be a commitment to any other facility other
8 than the state prison. Diversion shall not be granted nor shall the
9 defendant be eligible for commitment to the California
10 Rehabilitation Center as provided in Article 2 (commencing with
11 Section 3050) of Chapter 1 of Division 3 of the Welfare and
12 Institutions Code.

13 (5) The total amount of credits awarded pursuant to Article 2.5
14 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
15 3 shall not exceed one-fifth of the total term of imprisonment
16 imposed and shall not accrue until the defendant is physically
17 placed in the state prison.

18 (6) If there is a current conviction for more than one felony
19 count not committed on the same occasion, and not arising from
20 the same set of operative facts, the court shall sentence the
21 defendant consecutively on each count pursuant to subdivision
22 (e).

23 (7) If there is a current conviction for more than one serious or
24 violent felony as described in paragraph (6), the court shall impose
25 the sentence for each conviction consecutive to the sentence for
26 any other conviction for which the defendant may be consecutively
27 sentenced in the manner prescribed by law.

28 (8) Any sentence imposed pursuant to subdivision (e) will be
29 imposed consecutive to any other sentence which the defendant
30 is already serving, unless otherwise provided by law.

31 (d) Notwithstanding any other law and for the purposes of
32 subdivisions (b) to (i), inclusive, a prior conviction of a *serious or*
33 *violent* felony shall be defined as:

34 (1) Any offense defined in subdivision (c) of Section 667.5 as
35 a violent felony or any offense defined in subdivision (c) of Section
36 1192.7 as a serious felony in this state. The determination of
37 whether a prior conviction is a prior *serious or violent* felony
38 conviction for purposes of subdivisions (b) to (i), inclusive, shall
39 be made upon the date of that prior conviction and is not affected
40 by the sentence imposed unless the sentence automatically, upon

1 the initial sentencing, converts the felony to a misdemeanor. None
2 of the following dispositions shall affect the determination that a
3 prior *serious or violent felony* conviction is a prior felony for
4 purposes of subdivisions (b) to (i), inclusive:

5 (A) The suspension of imposition of judgment or sentence.

6 (B) The stay of execution of sentence.

7 (C) The commitment to the State Department of Health Services
8 as a mentally disordered sex offender following a conviction of a
9 felony.

10 (D) The commitment to the California Rehabilitation Center or
11 any other facility whose function is rehabilitative diversion from
12 the state prison.

13 (2) A *prior* conviction in another jurisdiction for an offense
14 that, if committed in California, is punishable by imprisonment in
15 the state prison. ~~A prior prison shall constitute a prior conviction~~
16 of a particular *serious or violent felony* ~~shall include a if the prior~~
17 conviction in ~~another~~ *the other* jurisdiction is for an offense that
18 includes all of the elements of the particular *violent felony* as
19 defined in subdivision (c) of Section 667.5 or *serious felony* as
20 defined in subdivision (c) of Section 1192.7.

21 (3) A prior juvenile adjudication shall constitute a prior *serious*
22 *or violent* felony conviction for purposes of sentence enhancement
23 if:

24 (A) The juvenile was 16 years of age or older at the time he or
25 she committed the prior offense.

26 (B) The prior offense is listed in subdivision (b) of Section 707
27 of the Welfare and Institutions Code or described in paragraph (1)
28 or (2) as a *serious or violent* felony.

29 (C) The juvenile was found to be a fit and proper subject to be
30 dealt with under the juvenile court law.

31 (D) The juvenile was adjudged a ward of the juvenile court
32 within the meaning of Section 602 of the Welfare and Institutions
33 Code because the person committed an offense listed in subdivision
34 (b) of Section 707 of the Welfare and Institutions Code.

35 (e) For purposes of subdivisions (b) to (i), inclusive, and in
36 addition to any other enhancement or punishment provisions which
37 may apply, the following shall apply where a defendant has ~~a one~~
38 *or more* prior *serious or violent felony conviction* ~~convictions~~:

39 (1) If a defendant has one prior *serious or violent* felony
40 conviction, ~~as defined in subdivision (d)~~, that has been pled and

proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) ~~If Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions, as defined in subdivision (d), that have been pled and proved, the term for a current felony conviction for an offense defined in subdivision (c) of Section 667.5 as a violent felony or in subdivision (c) of Section 1192.7 as a serious felony shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater greatest of:~~

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) *If a defendant has two or more prior serious or violent felony convictions, as defined in subdivision (d), that have been pled and proved, and the current offense is not a serious or violent felony, as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e), unless the prosecution pleads and proves any of the following:*

(i) *The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.*

(ii) *The current offense is a felony sex offense, as defined in subdivision (d) of Section 261.5 or Section 262, except for Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, and paragraph (1) of subdivision (b) and subdivision (e) of Section 288a.*

1 (iii) *During the commission of the current offense, the defendant*
2 *used a firearm, was armed with a firearm or deadly weapon, or*
3 *intended to cause great bodily injury to another person.*

4 (iv) *The defendant suffered a prior conviction, as defined in*
5 *subdivision (d), for any of the following serious or violent felonies:*

6 (I) *A sexually violent offense as defined in subdivision (b) of*
7 *Section 6600 of the Welfare and Institutions Code.*

8 (II) *Oral copulation, as defined in Section 288a, with a child*
9 *who is under 14 years of age, and who is more than 10 years*
10 *younger than the defendant; sodomy, as defined in Section 286,*
11 *with a child who is under 14 years of age, and who is more than*
12 *10 years younger than the defendant; or sexual penetration, as*
13 *defined in Section 289, with a child who is under 14 years of age,*
14 *and who is more than 10 years younger than the defendant.*

15 (III) *A lewd or lascivious act involving a child under 14 years*
16 *of age in violation of Section 288.*

17 (IV) *An offense described in Sections 187 to 191.5, inclusive.*

18 (V) *Any serious or violent felony offense punishable by life*
19 *imprisonment or death.*

20 (f) (1) *Notwithstanding any other law, subdivisions (b) to (i),*
21 *inclusive, shall be applied in every case in which a defendant has*
22 *a prior serious or violent felony conviction as defined in*
23 *subdivision (d). The prosecuting attorney shall plead and prove*
24 *each prior serious or violent felony conviction except as provided*
25 *in paragraph (2).*

26 (2) *The prosecuting attorney may move to dismiss or strike a*
27 *prior serious or violent felony conviction allegation in the*
28 *furtherance of justice pursuant to Section 1385, or if there is*
29 *insufficient evidence to prove the prior serious or violent*
30 *conviction. If upon the satisfaction of the court that there is*
31 *insufficient evidence to prove the prior felony conviction, the court*
32 *may dismiss or strike the allegation.*

33 (g) *Prior serious or violent felony convictions shall not be used*
34 *in plea bargaining as defined in subdivision (b) of Section 1192.7.*
35 *The prosecution shall plead and prove all known prior serious or*
36 *violent felony convictions and shall not enter into any agreement*
37 *to strike or seek the dismissal of any prior serious or violent felony*
38 *conviction allegation except as provided in paragraph (2) of*
39 *subdivision (f).*

1 (h) All references to existing statutes in subdivisions (c) to (g),
2 inclusive, are to statutes as they existed on ~~June 30, 1993~~ *November*
3 *4, 2014*.

4 (i) If any provision of subdivisions (b) to (h), inclusive, or the
5 application thereof to any person or circumstance is held invalid,
6 that invalidity shall not affect other provisions or applications of
7 those subdivisions which can be given effect without the invalid
8 provision or application, and to this end the provisions of those
9 subdivisions are severable.

10 (j) The provisions of this section shall not be amended by the
11 Legislature except by statute passed in each house by rollcall vote
12 entered in the journal, two-thirds of the membership concurring,
13 or by a statute that becomes effective only when approved by the
14 electors.

15 *SEC. 2. Section 667.1 of the Penal Code is amended to read:*

16 667.1. Notwithstanding subdivision (h) of Section 667, for all
17 offenses committed on or after the effective date of this act, all
18 references to existing statutes in subdivisions (c) to (g), inclusive,
19 of Section 667, are to those statutes as they existed on ~~the effective~~
20 ~~date of this act, including amendments made to those statutes by~~
21 ~~the act enacted during the 2005–06 Regular Session that amended~~
22 ~~this section~~ *November 4, 2014*.

23 ~~SEC. 2.~~

24 *SEC. 3. Section 1170.12 of the Penal Code is amended to read:*

25 1170.12. (a) Notwithstanding any other provision of law, if a
26 defendant has been convicted of a felony and it has been pled and
27 proved that the defendant has one or more prior *serious or violent*
28 felony convictions, as defined in subdivision (b), the court shall
29 adhere to each of the following:

30 (1) There shall not be an aggregate term limitation for purposes
31 of consecutive sentencing for any subsequent felony conviction.

32 (2) Probation for the current offense shall not be granted, nor
33 shall execution or imposition of the sentence be suspended for any
34 prior offense.

35 (3) The length of time between the prior *serious or violent* felony
36 conviction and the current felony conviction shall not affect the
37 imposition of sentence.

38 (4) There shall not be a commitment to any other facility other
39 than the state prison. Diversion shall not be granted nor shall the
40 defendant be eligible for commitment to the California

1 Rehabilitation Center as provided in Article 2 (commencing with
2 Section 3050) of Chapter 1 of Division 3 of the Welfare and
3 Institutions Code.

4 (5) The total amount of credits awarded pursuant to Article 2.5
5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
6 3 shall not exceed one-fifth of the total term of imprisonment
7 imposed and shall not accrue until the defendant is physically
8 placed in the state prison.

9 (6) If there is a current conviction for more than one felony
10 count not committed on the same occasion, and not arising from
11 the same set of operative facts, the court shall sentence the
12 defendant consecutively on each count pursuant to this section.

13 (7) If there is a current conviction for more than one serious or
14 violent felony as described in paragraph (6) of this subdivision,
15 the court shall impose the sentence for each conviction consecutive
16 to the sentence for any other conviction for which the defendant
17 may be consecutively sentenced in the manner prescribed by law.

18 (8) Any sentence imposed pursuant to this section will be
19 imposed consecutive to any other sentence which the defendant
20 is already serving, unless otherwise provided by law.

21 (b) Notwithstanding any other provision of law and for the
22 purposes of this section, a prior conviction of a *serious or violent*
23 felony shall be defined as:

24 (1) Any offense defined in subdivision (c) of Section 667.5 as
25 a violent felony or any offense defined in subdivision (c) of Section
26 1192.7 as a serious felony in this state. The determination of
27 whether a prior conviction is a prior *serious or violent* felony
28 conviction for purposes of this section shall be made upon the date
29 of that prior conviction and is not affected by the sentence imposed
30 unless the sentence automatically, upon the initial sentencing,
31 converts the felony to a misdemeanor. None of the following
32 dispositions shall affect the determination that a prior conviction
33 is a prior *serious or violent* felony for purposes of this section:

34 (A) The suspension of imposition of judgment or sentence.

35 (B) The stay of execution of sentence.

36 (C) The commitment to the State Department of *Mental Health*
37 ~~Services~~ as a mentally disordered sex offender following a
38 conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A *prior* conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. ~~A shall constitute a prior conviction of a particular serious or violent felony shall include a if the prior conviction in another the other jurisdiction for an offense that includes all of the elements of the particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.~~

(3) A prior juvenile adjudication shall constitute a prior *serious or violent* felony conviction for purposes of sentence enhancement if *both of the following* apply:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, ~~and~~

~~(B) The prior offense is~~

~~(i) listed~~

~~and the prior offense is listed either in subdivision (b) of Section 707 of the Welfare and Institutions Code, or (ii) listed in this subdivision as a serious or violent felony, and.~~

~~(C)~~

~~(B) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and (D) The juvenile and he or she was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person he or she committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.~~

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has ~~a one or more prior serious or violent felony conviction~~ convictions:

(1) If a defendant has one prior *serious or violent* felony conviction, as defined in ~~paragraph (1) of subdivision (b)~~, that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) ~~If~~ *Except as provided in subparagraph (C), if* a defendant has two or more prior *serious or violent* felony

1 convictions, as defined in ~~paragraph (1) of subdivision (b), that~~
2 have been pled and proved, the term for the current felony
3 conviction ~~for an offense defined in subdivision (c) of Section~~
4 ~~667.5 as a violent felony or in subdivision (c) of Section 1192.7~~
5 ~~as a serious felony~~ shall be an indeterminate term of life
6 imprisonment with a minimum term of the indeterminate sentence
7 calculated as the ~~greater~~ *greatest* of

8 (i) ~~three~~ *Three* times the term otherwise provided as punishment
9 for each current felony conviction subsequent to the two or more
10 prior *serious or violent* felony convictions; ~~or~~.

11 (ii) ~~twenty-five~~ *Twenty-five* years ~~or~~.

12 (iii) ~~the~~ *The* term determined by the court pursuant to Section
13 1170 for the underlying conviction, including any enhancement
14 applicable under Chapter 4.5 (commencing with Section 1170) of
15 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

16 (B) The indeterminate term described in subparagraph (A) of
17 paragraph (2) of this subdivision shall be served consecutive to
18 any other term of imprisonment for which a consecutive term may
19 be imposed by law. Any other term imposed subsequent to any
20 indeterminate term described in subparagraph (A) of paragraph
21 (2) of this subdivision shall not be merged therein but shall
22 commence at the time the person would otherwise have been
23 released from prison.

24 (C) *If a defendant has two or more prior serious or violent*
25 *felony convictions, as defined in subdivision (b), that have been*
26 *pled and proved, and the current offense is not a serious or violent*
27 *felony, as described in paragraph (1) of subdivision (b), the*
28 *defendant shall be sentenced pursuant to paragraph (1) of*
29 *subdivision (c), unless the prosecution pleads and proves any of*
30 *the following:*

31 (i) *The current offense is a controlled substance charge, in*
32 *which an allegation under Section 11370.4 or 11379.8 of the*
33 *Health and Safety Code was admitted or found true.*

34 (ii) *The current offense is a felony sex offense, as defined in*
35 *subdivision (d) of Section 261.5 or Section 262, except for Sections*
36 *266 and 285, paragraph (1) of subdivision (b) and subdivision (e)*
37 *of Section 286, and paragraph (1) of subdivision (b) and*
38 *subdivision (e) of Section 288a.*

1 (iii) *During the commission of the current offense, the defendant*
2 *used a firearm, was armed with a firearm or deadly weapon, or*
3 *intended to cause great bodily injury to another person.*

4 (iv) *The defendant suffered a prior conviction for any of the*
5 *following serious or violent felonies:*

6 (I) *A sexually violent offense, as defined in subdivision (b) of*
7 *Section 6600 of the Welfare and Institutions Code.*

8 (II) *Oral copulation, as defined in Section 288a, with a child*
9 *who is under 14 years of age, and who is more than 10 years*
10 *younger than the defendant; sodomy, as defined in Section 286,*
11 *with a child who is under 14 years of age, and who is more than*
12 *10 years younger than the defendant; or sexual penetration, as*
13 *defined in Section 289, with a child who is under 14 years of age,*
14 *and who is more than 10 years younger than the defendant.*

15 (III) *A lewd or lascivious act involving a child under 14 years*
16 *of age in violation of Section 288.*

17 (IV) *An offense described in Sections 187 to 191.5, inclusive.*

18 (V) *Any serious or violent felony offense punishable by life*
19 *imprisonment or death.*

20 (d) (1) *Notwithstanding any other provision of law, this section*
21 *shall be applied in every case in which a defendant has a one or*
22 *more prior serious or violent felony conviction convictions, as*
23 *defined in this section. The prosecuting attorney shall plead and*
24 *prove each prior serious or violent felony conviction except as*
25 *provided in paragraph (2).*

26 (2) *The prosecuting attorney may move to dismiss or strike a*
27 *prior serious or violent felony conviction allegation in the*
28 *furtherance of justice pursuant to Section 1385, or if there is*
29 *insufficient evidence to prove the prior serious or violent*
30 *conviction. If upon the satisfaction of the court that there is*
31 *insufficient evidence to prove the prior serious or violent felony*
32 *conviction, the court may dismiss or strike the allegation.*

33 (e) *Prior serious or violent felony convictions shall not be used*
34 *in plea bargaining, as defined in subdivision (b) of Section 1192.7.*
35 *The prosecution shall plead and prove all known prior serious or*
36 *violent felony convictions and shall not enter into any agreement*
37 *to strike or seek the dismissal of any prior serious or violent felony*
38 *conviction allegation except as provided in paragraph (2) of*
39 *subdivision (d).*

1 (f) If any provision of subdivisions (a) to (e), inclusive, or the
2 application thereof to any person or circumstance is held invalid,
3 that invalidity shall not affect other provisions or applications of
4 those subdivisions that can be given effect without the invalid
5 provision or application, and to this end the provisions of those
6 subdivisions are severable.

7 (g) The provisions of this section shall not be amended by the
8 Legislature except by statute passed in each house by rollcall vote
9 entered in the journal, two-thirds of the membership concurring,
10 or by a statute that becomes effective only when approved by the
11 electors.

12 SEC. 4. Section 1170.125 of the Penal Code is amended to
13 read:

14 1170.125. Notwithstanding Section 2 of Proposition 184, as
15 adopted at the November 8, 1994, general election, for all offenses
16 committed on or after the effective date of this act, all references
17 to existing statutes in Section 1170.12 are to those statutes as they
18 existed ~~on the effective date of this act, including amendments~~
19 ~~made to those statutes by the act enacted during the 2005-06~~
20 ~~Regular Session that amended this section November 4, 2014.~~

21 SEC. 5. This act is an exercise of the public power of the people
22 of the State of California for the protection of the health, safety,
23 and welfare of the people of the State of California, and shall be
24 liberally construed to effectuate those purposes.

25 SEC. 6. If any provision of this act, or the application thereof
26 to any person or circumstance, is held invalid, that invalidity shall
27 not affect any other provision or application of this act, which can
28 be given effect without the invalid provision or application in order
29 to effectuate the purposes of this act. To this end, the provisions
30 of this act are severable.

31 ~~SEC. 3.~~

32 SEC. 7. (a) Sections ~~1 and 2~~ to 6, inclusive, of this act affect
33 initiative statutes, and shall become effective only when submitted
34 to, and approved by, the voters of California, pursuant to
35 subdivision (c) of Section 10 of Article II of the California
36 Constitution.

1 (b) The Secretary of State shall submit Sections 1~~and 2~~ to 6,
2 *inclusive*, of this act to the voters for approval at the November 6,
3 2012 4, 2014, statewide general election.

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